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HAROLD B. WILLEY,

In the

Supreme Court of the United States

OCTOBER TERM, A. D. 1953

No. 611

COLLIN COUNTY LEVEE IMPROVEMENT DISTRICT No. 1, *et al.*,

Appellants,

v.

UNITED STATES OF AMERICA, *et al.*,

Appellees.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT OF PETITION

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To the Honorable Earl Warren, Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Your Petitioner respectfully shows:

SUMMARY STATEMENT OF THE MATTER INVOLVED

On July 12, 1950, the United States of America filed a condemnation suit in the Federal District Court of the

Eastern District of Texas to condemn some 3,000 acres of land owned by various farmers in the Collin County Levee Improvement District No. 1. On the same date a declaration of taking was filed against the individual landowners and a deposit of estimated compensation was made in the registry of the Court. This land was taken by the United States for the Lavon Dam and Reservoir Project.

At the time this suit was filed against these individual landowners, the Reconstruction Finance Corporation held the outstanding bonds from two issues which the Collin County Levee Improvement District No. 1 had issued in building, improving and enlarging its levee system. There are approximately $40,000.00 in bonds outstanding.

On August 10, 1951, the Reconstruction Finance Corporation filed a motion asking that the Levee Improvement District Bonds be paid out of the moneys on deposit to the credit of the particular tracts. In December, 1951, the landowners filed a motion seeking a distribution of the funds which had been deposited to their credit for their individual land and at the same time called the matter to the Court's attention that the Levee Improvement District itself owned sufficient assets with which to retire the outstanding bonds.

On December 15, 1952, a hearing was had before the Honorable Joe W. Sheehy in the Federal District Court at Sherman. At this hearing several landowners who had not paid Levee District taxes since construction of the Lavon Dam had started in 1947 recommended to the Court that the past due delinquent taxes constituted liens against their farms and they moved the Court to deliver to Recon-

struction Finance Corporation parts of their awards equal to their delinquent taxes, admitting that the Reconstruction Finance Corporation had a lien on their property as of July 12, 1950, for all delinquent levee taxes. In the hearing on December 15, 1952, the Court permitted the landowners to withdraw part of the deposits which had been made as just compensation for their farms, but retained a sufficient amount out of each landowner's deposit to retire the pro rata part of the Levee District Bonds that that landowner's acreage bore to the total acreage in the Levee District.

On the 19th day of February, 1953, the Court entered its order carrying out the above pronouncement. It is from this order that appeal was taken to the Circuit Court of Appeals for the Fifth Circuit. The appeal from the District Court was on an agreed statement of the case and an agreed statement of the points. The three points were as follows, to-wit:

NUMBER ONE

Did the Reconstruction Finance Corporation as the holder and owner of Collin County Levee Improvement District No. One Bonds, have a lien on the lands located within the District at the time of taking of the lands by the United States of America?

NUMBER TWO

Is the obligation of the Collin County Levee Improvement District No. One to pay the bonded indebtedness dischargeable out of the condemnation awards made to the landowners?

NUMBER THREE

To what date should interest due Reconstruction Finance Corporation on bonds held by them be paid?

On November 23, 1953, attorneys for Reconstruction Finance Corporation and for the United States as well as attorneys for the landowners in the Collin County Levee Improvement District appeared in Fort Worth and argued the question orally before the Circuit Court of Appeals.

On the 9th day of December, 1953, the Honorable Circuit Court rendered judgment affirming the Honorable Trial Court. A petition for rehearing was duly filed and on the 12th day of January, 1954, the Honorable Circuit Court of Appeals denied the petition for rehearing. On the 3rd day of February, 1954, the Honorable Circuit Court of Appeals for the Fifth Circuit entered its order recalling the Mandate in the above matter staying same thirty days from the 3rd day of February, 1954, pending the filing of the petition above mentioned "provided that within thirty days from the date of this order there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that Certiorari Petition and record have been filed."

The jurisdiction of this Court is invoked under *Section 1254* of the *Judicial Code (1948), 28 U. S. C. Section 1254.*

JURISDICTIONAL STATEMENT

I.

It is contended that the Supreme Court has jurisdiction to review the judgment herein questioned because the "Circuit Court of Appeals has rendered a decision in conflict with decision(s) of another Circuit Court of Appeals on the same matter," [Supreme Court Rule 38, para. (5) (b)], the Circuit Court in the instant case holding that the levee district has a lien on lands before the taxes are even assessed is in direct conflict with the decision of the Court of Appeals of *Puerto Rico on Behalf of Isabella Irrigation Service v. U. S. (134 Fed. 2d 267)*. This court denied certiorari in *88 L. Ed. 448*. In that case it was held that there were no liens until the annual assessment was made and that the future possible assessments created potential liens only. The Court said that these potential liens for future assessments could not be paid out of money paid into court as compensation for taking of the assessed lands by the United States. The case *People of Puerto Rico v. U. S. (131 F. 2d 151)* says that the money deposited in Court by U. S. when it takes title under condemnation proceedings stands in the place of land taken and from it the claims of lienholders may be satisfied, but only claims, whether for taxes or otherwise, based on existing liens and not on potential liens. Certiorari denied, *87 L. Ed. 1144*.

II.

This Court also has jurisdiction of this case because the Circuit Court "has decided a Federal Question in a way

probably in conflict with applicable decisions of this court." [Supreme Court Rule 38, para. (5) (b)], by denying application for Writ of Certiorari in *People of Puerto Rico, on Behalf of the Isabella Irrigation Service, Petitioner v. United States of America (88 L. Ed. 448)* this court approved the lower court's holding that the liens did not come into being until the assessment was made. Therefore, when the lower court in the instant case held otherwise, it held in conflict with a decision approved by this court.

III.

This case involved "an important question of Federal law, which has not been, but should be, settled by this Court." [Supreme Court Rule 38, para (5) (b)], Title 40, Sec. 258a, in outlining procedure for condemnation says:

> "The Court shall have power to make such orders in respect to encumbrances, liens, rents, taxes, assessments, insurance and other charges, if any, as shall be just and equitable."

The holding of the lower court is to the effect that by order it can bring a lien into existence where none existed before. It in effect tells the landowners that: although when you voted the bonds on your land to build the levees, the Constitution of Texas guaranteed that you would only have to pay your taxes annually through 1969 and that no agency could force you to pay more than your annual tax (the extent of which was regulated by the Constitution of both Texas and the United States); in truth and in fact, you can be made to pay your taxes for the next seventeen

years all at one time on one date, and at the same time deprive you of the benefit of your property these seventeen years while we are making you pay your taxes.

No landowner ever knows what his taxes are going to be any year until the machinery which determines these amounts has processed the matter (in Texas this machinery operates from January 1, when you can start rendering, through September 30, after which you can learn the correct amount and pay). The taxes are not the same every year, levee district taxes are based on State and County tax valuations; these vary from year to year from farm to farm, depending on the rendered value after it has gone through the equalization mill. Some acres in this district are worth ten times as much as other acres. Can this section of the statute be construed to make every acre pay the same part of debt? If so, for one man, it amounts to confiscation of his property, for his neighbor he pays much less than his taxes would have been.

IV.

This Court also has jurisdiction of this case because the Circuit Court has decided an important question of local Texas law contra to the Constitution, the Statutes, and the Decisions of Texas. Art. 16 Sec. 59a of the Constitution of Texas which authorizes the levee type of improvements, provides for the bonds, etc., in regard to the lien uses these words "and such indebtedness shall be a lien upon the property *assessed* (italics mine) for the payment thereof;". This clearly shows that the Constitution of Texas provides

for this bonded indebtedness to be a lien only *after assessment.* The assessment has to happen annually for that year's taxes.

Art. 7998 (R. C. S.) of Texas says that levee district taxes shall be handled in same way at same time in same manner as State and County taxes. This is all the statute laws on levee district tax procedure. This is all that is needed because this statute makes levee district taxes follow regular County and State procedures.

In the case of *State Mortgage Corporation v. Ludwig, 35 S. W. 2d 267* the San Antonio Court of Civil Appeals in construing the regular property tax lien provision (not levee tax lien) of the *Texas Constitution, Art. 8, Sec. 15,* says:

> "It is clearly inferable from the language of the Constitution that no parcel of land can be held liable for any, except the taxes *assessed against* it, * * *." (Italics mine.)

This case was reversed on other grounds in *48 S. W. 2d 950.*

THE QUESTIONS PRESENTED

The only questions before this Court are:

NUMBER ONE

Did the Reconstruction Finance Corporation as the holder and owner of Collin County Levee Improvement District No. One Bonds, have a lien on the lands located within the District at the time of taking of the lands by the United States of America?

NUMBER TWO

Is the obligation of the Collin County Levee Improvement District No. One to pay the bonded indebtedness dischargeable out of the condemnation awards made to the landowners?

These two questions resolve themselves into one. If the Reconstruction Finance Corporation had a lien on the lands at the time of taking, then the bonds are dischargeable out of the landowners awards, otherwise they are not.

REASONS RELIED UPON FOR ALLOWANCE OF WRIT:

1. The decision of said Circuit Court of Appeals is in conflict with the decisions of the Civil Court of Appeals for Puerto Rico in two cases. These being the only cases in which a Circuit Court of Appeals has ever passed on the

exact question involving a levee or similar district's bonded indebtedness. *Puerto Rico on Behalf of Isabella Irrigation Service v. U. S. (134 Fed. 2d 267), Certiorari denied. 88 L. Ed. 448. People of Puerto Rico v. U. S. (131 Fed. 2d 151). Certiorari denied 87 L. Ed. 1144.*

2. The decision of said Circuit Court of Appeals decides a federal question in a way probably in conflict with applicable decisions of this court. In the two cases from Puerto Rico cited in (1) above the Supreme Court in denying Certiorari in each case thereby approved the lower court's holding that the liens did not come into being until the *assessment* was made.

3. The decision of said Circuit Court of Appeals decides an important question of Federal law which has not been, but should be settled by this court. Section 258a Title 40 of the Condemnation law gives the trial court power to make orders concerning taxes, liens, et cetera, as shall be just and equitable. The lower court in the instant case by its ruling has said in effect that this statute authorizes the Court to create a lien. This question should be decided by this Court.

4. The decision of said Circuit Court of Appeals decides an important question of local Texas law contra to the Constitution of Texas. Art. 16, Sec. 59a of the Texas Constitution which authorizes levee improvements, provides for bonds, et cetera, in regard to the lien uses these words, "and such indebtedness shall be a lien upon the property *assessed*

(italics mine) for the payment thereof;". This clearly shows that the Constitution of Texas intends for bonded indebtedness to be a lien only *after assessment.* The *assessment* has to be done annually. It can't be done otherwise.

WHEREFORE, Your Petitioner prays that a Writ of Certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said United States Circuit Court of Appeals for the Fifth Circuit had in the case numbered and entitled on its docket No. 14,591 *Collin County Levee Improvement District No. 1, et al., Appellants versus United States of America, et al., Appellees,* to the end that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States; and that the Judgment herein of said United States Circuit Court of Appeals for the Fifth Circuit be reversed by the Court and for such further relief as to this Court may seem proper.

Respectfully submitted,

ROLAND BOYD,
202 Central National Bank
Building,
McKinney, Texas,

.....
Counsel for Petitioner.

February....., 1954.

No.....

In the

Supreme Court of the United States

OCTOBER TERM, A. D. 1953

COLLIN COUNTY LEVEE IMPROVEMENT DISTRICT NO. 1, *et al.*,

Appellants,

v.

UNITED STATES OF AMERICA, *et al.*,

Appellees.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

THE OPINION BELOW

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit is reported in *208 Fed. 2d 396.* This opinion is also printed in full in the Record (R. 23-26). The decree of the United States District for the Eastern District of Texas, Sherman Division, is printed in full in the Record (R. 9-14).

JURISDICTION

The jurisdiction of this Court is invoked under *Section 1254* of the *Judicial Code (1948), 28 U. S. C., Sec. 1254.*

1. The Circuit Court of Appeals has in this case "rendered a decision in conflict with the decision of another Circuit Court of Appeals on the same matter." [Supreme Court Rule 38(5)(b)].

2. The Circuit Court of Appeals has in this case "decided a Federal question in a way probably in conflict with the applicable decisions of this Court." [Supreme Court Rule 38(5)(b)].

3. The Circuit Court of Appeals has in this case "decided an important question of Federal Law which has not been, but should be, settled by this Court." [Supreme Court Rule 38(5)(b)].

4. The Circuit Court of Appeals has decided an important question of local Texas law contra to the Constitution of Texas. [Supreme Court Rule 38(5)(b)].

Judgment was rendered in this case by the United States Court of Appeals on December 9, 1953 (R. 27) and Petition for Rehearing was denied January 12, 1954 (R. 31).

STATEMENT OF THE CASE

This has already been stated in the preceding Petition for Certiorari (pp. 1-11), which is here adopted and made a part of this brief.

PRESENT STATUS OF CONDEMNATION PROCEEDINGS

After the court made its ruling that the bonds should be paid out of the landowners' individual awards, all further proceedings were stopped pending this appeal. No hearings on values have been held, no values set nor agreed upon.

When the current point is decided finally, then we can proceed with every party concerned knowing the route that each must follow to receive just compensation for their property.

To proceed in this manner gives the courts the best possible opportunity to mete out substantial justice to all parties.

SPECIFICATIONS OF ERROR

1. The Court erred in granting the motion of Reconstruction Finance Corporation for payment of their bonds out of funds deposited in the registry of the court to the credit of various landowners; because the only lien had by the Reconstruction Finance Corporation on the lands located within Collin County Levee Improvement District No. One was for taxes which had been assessed prior to the passing of title of said lands to the United States of America on July 12, 1950. And these liens were discharged by the trial court on motion of the landowners themselves in open court, when said court ordered the amounts equal to taxes assessed but not paid, delivered to Reconstruction Finance Corporation out of each landowner's awards.

2. The Honorable Circuit Court of Appeals erred in holding:

> **"Appellees insist that general taxes and the Constitutional and statutory provisions, pertaining thereto are completely irrelevant here." * * * "We are in no doubt that this is so." 208 Fed. 2d 396 on page 397.**

3. The Honorable Circuit Court of Appeals erred in holding:

> **"Its claim is that Section 59(c)[2], providing for the creation of indebtedness necessary to achieve the purpose of the amendment and 'all such indebtedness may be evidenced by bonds' of the district and 'such indebtedness shall be a lien upon the property assessed for the payment thereof,' and Art. 8012, Revised Civil Statutes of Texas, Vernon's Ann. Civ. St., providing for the levy of taxes for the payment of bonds issued by any levee improvement district, and that 'such levy may be made for or at the time of the issuance of said bonds for each year throughout the life of the bond issue which shall be the rate of levy for each of said years until modified,' established beyond question that the bonds were a lien on the land as claimed and found." 208 Fed. 2d 396 on page 397.**

4. The Honorable Circuit Court of Appeals erred in holding that the bond holders had any claim against the lands except annual taxes.

SUMMARY OF ARGUMENT

1. The levee district had a lien on the land within the district at the time it was taken by the United States only for the past due taxes, not for future taxes. The bond holders could have no better claim on the land in question than the levee district had.

To compel the landowners to pay off the bonds out of awards deposited to their individual accounts in a condemnation suit is in effect compelling them to pay seventeen years' future taxes at one time on property which they no longer own.

2. If the general tax statutes and constitutional provisions of the Texas law do not regulate the procedures that are followed with reference to rendering, assessing, paying, et cetera, levee district taxes, then there are no statutory bases for collecting said taxes.

3. The fact that a tax was levied at the time bonds were issued for each year during the life of the bonds does not permit the authorities to figure the amount of tax due each year on each farm since the levy of a tax is but fixing the rate and it is necessary to have the property valuation so the exact tax due can be determined. The property valuation is a factor that changes from year to year.

4. If the levee district lands had not been taken by the United States and the district had defaulted in payment of the bonds, the bond holders' only remedy would be to mandamus the officials of the levee district to enforce the collection of annual taxes. The condemnation of the levee district property does not entitle the bondholders to any remedies that they would not have before the condemnation.

I.

POINT OF ERROR NUMBER ONE

The Court erred in granting the motion of Reconstruction Finance Corporation for payment of their bonds out of funds deposited in the registry of the court to the credit of various landowners; because the only lien had by the Reconstruction Finance Corporation on the lands located within Collin County Levee Improvement District

No. One was for taxes which had been assessed prior to the passing of title of said lands to the United States of America on July 12, 1950. And these liens were discharged by the trial court on motion of the landowners themselves in open court, when said court ordered the amounts equal to taxes assessed but not paid, delivered to Reconstruction Finance Corporation out of each landowner's awards.

ARGUMENT

The title to the lands in question vested in the United States of America upon the filing of the declaration of taking *(Title 40, Sec. 258a, F. C. A.)* .

DID THE RECONSTRUCTION FINANCE CORPORATION HAVE A LIEN ON THE LANDS IN QUESTION WHEN THE DECLARATION OF TAKING WAS FILED?

This question must be determined by the law of the State of Texas. "* * * The tax lien status however, must be determined by the law of the state, and, if established, must be followed by the United States Court." *United States v. Certain Parcels of Land in City of San Diego (44 Fed. Supp. 936).*

> "The status of taxes as liens on real estate or personal property is of course to be determined by the laws of the particular state." *United States v. Certain Parcels of Land, 40 F. Supp. 436 (Pg. 443).*

To the same effect are *U. S. v. A Certain Parcel of Land, 59 Fed. Sup. 65; U. S. v. Parcels of Land, 57 F. Sup. 381,* and *U. S. v. Alberts, 55 F. Sup. 217* (I find no case holding otherwise.) Therefore, our question is:

ACCORDING TO THE LAWS OF THE STATE OF TEXAS DID COLLIN COUNTY LEVEE IMPROVEMENT DISTRICT NO. ONE HAVE A TAX LIEN ON THE LAND WITHIN THE DISTRICT FOR FUTURE TAXES?

The foundation for levee improvement is found in the *Texas Constitution, Art. 16, Sec. 59a:*

> "The Legislature shall authorize all such indebtedness as may be necessary to provide all improvements and the maintenance thereof requisite to the achievement of the purposes of this amendment, and all such indebtedness may be evidenced by bonds of such conservation and reclamation districts, to be issued under such regulation as any (may be prescribed by law and shall also, authorize the levy and collection within such districts of all such taxes, equitably distributed, as may be necessary for the repayment of the interest and the creation of a sinking fund for the payment of such bonds; and also for the maintenance of such districts and improvements, and such indebtedness shall be a lien upon the property assessed for the payment thereof; provided the Legislature shall not authorize the issuance of any bonds or provide for any indebtedness against any reclamation district unless such proposition shall first be submitted to the qualified property tax-paying voters of such district and the proposition adopted. (Sec. 59, Art. 16, adopted election Aug. 21, 1917; proclamation October 2, 1917.)"

The words "* * * and such indebtedness shall be a lien upon the property *assessed* (italics mine) for the payment thereof," are the only words in the Constitution which mention a lien upon Levee District property to secure the payment of taxes.

It is clear that the Constitution didn't intend for a lien to exist until the property was "assessed."

Art. 7998 (R. C. S. of Texas) says:

> "In all levee improvement districts providing for the levee of taxes upon an ad valorem basis, the taxable property shall be assessed at the same value as assessed for State and County purposes. In the assessment of taxes in such district, and in all matters pertaining thereto or connected therewith, the County Tax Assessor shall have the same powers and shall be governed by the same rules, regulations and proceedings as are provided by the laws of this State for the assessment and collection of County and State taxes. * * *."

This is all the statute law on levee district tax procedure. This is all that is necessary because this brings levee district taxes under regular County and State tax laws and procedure.

Therefore, we must look to the general tax laws of Texas for further light on question. We must look to these general laws to determine when property is "assessed."

Art. 7151 (R. C. S. of Texas) says the landowner should render his property for taxes between January 1 and April 30 of each year.

Art. 7189 (R. C. S. of Texas) says:

> "Assessors of taxes shall, between the first day of January and the thirtieth day of April of each year, proceed to take a list of taxable property, real and personal in his county and *assess the value* (italics mine) thereof in the manner following, to-wit: * * *."

Art. 7190 to 7205 (R. C. S. of Texas) outlines in detail the method to be followed in *assessing* (italics mine) the various types of property.

Art. 7198 (R. C. S. of Texas) provides that the *assessing* (italics mine) be completed "on the first day of June each year, or as soon thereafter as practicable."

Art. 7206 (R. C. S. of Texas) provides for equalization of taxes.

Art. 7219 (R. C. S. of Texas) requires preparation of tax rolls.

Art. 7255 (R. C. S. of Texas) requires the tax collector to begin the collection of taxes annually "on the first day of October, or so soon thereafter as he may be able to obtain the proper *assessment* (italics mine) rolls * * *."

These statutes which regulate the levee district taxes show clearly what is meant when the Constitution says "* * * and such indebtedness shall be a lien upon the property *assessed* (italics mine) for the payment thereof." This property is assessed each year for that year's taxes; no one knows how much the tax will be on any farm until the land owners renders, the tax assessor assesses, the board equalizes, and the assessment rolls are made up *for each year.*

The amount of taxes varies from year to year on the same farm. It follows State and County value (Art. 7998, supra).

There is no Texas case construing this part of the Constitution on levee district taxes. There are many Texas

cases saying when State and County Taxes become liens on real estate.

The Supreme Court in *State v. Farmer, 94 Tex. 232, 59 S. W. 541*, holds:

> "The lien of the state, under the provisions of the Constitution, arises out of the assessment of the property and does not exist until that assessment is made. It is the assessment made annually by the officers of the state under and in accordance with the law which holds a lien upon the land. The word 'assessment' as here used evidently means the sum which has been ascertained as the apportioned part of the tax to be charged against the particular piece of property, but under our Constitution and the provisions of our statute, the word embraces more than simply the amount and includes the procedure on the part of the officials by which the property is listed, valued and finally the pro rata declared."

The case of *Freeman v. State, et al. (199 S. W. 2d 301)*, holds:

> "This view is further fortified by the fact that foreclosure of the tax lien on realty, followed by a sale thereof, is a harsh remedy, and to justify divesting an owner of his title, a strict adherence to the requirements of the law must be had. Only by such strict adherence can it be a judicial proceeding as contra-distinguished from a summary proceeding. As we construe the law relating to the collection of delinquent taxes, antecedent things necessary to fix a valid tax lien, and consequent authority to foreclose it, must result only from what the tax records show. Due process requires as much. See also: Chisholm v. Adams, 71 Tex. 678, 10 S. W. 336; Miller v. Vance, 107 Tex. 485, 180 S. W. 739; Crocker v. Santo Consolidated School Dist.,

Tex. Civ. App., 116 S. W. 2d 750, Syl. 12-14; Broocks v. State, Tex. Civ. App., 41 S. W. 2d 714; Garza v. City of San Antonio, Tex. Com. App., 231 S. W. 697; Gifford Motor Co. v. Phillips, Tex. Civ. App., 55 S. W. 2d 1087; 40 Tex. Jur., pages 227, 228, Para. 161 and 162.

"The rule is that taxes are not a lien upon property, unless expressly made so, and this applies to special taxes in districts, as well as general taxes. Cooley, Taxation, pp. 865, 866, and authorities cited in footnotes; State v. Hunt (Tex. Civ. App.), 207 S. W. 636."

Texas Jurisprudence under the general topic of *"Taxation," vol. 40, pg. 203, Sec. 145,* says:

"A lawful assessment[12] is a prerequisite of a lien.[13]"

It appears that there is no basis for saying that these levee district taxes can become a lien on the lands until the taxes are assessed.

The question before this court on this appeal is whether the taxes for the years 1951, 1952, 1953, 1954, 1955, 1956, 1957, 1958, 1959, 1960, 1961, 1962, 1963, 1964, 1965, 1966, 1967, 1968, and 1969 are liens against these levee district lands before they have been assessed, before the amount has been determined, before the rolls have been made up. And all of this after title to the lands in question had vested in the United States, which happened on July 12, 1950.

II.

POINT OF ERROR NUMBER TWO

The Honorable Circuit Court of Appeals erred in holding:

> **"Appellees insist that general taxes and the Constitutional and statutory provisions, pertaining thereto are completely irrelevant here." * * * "We are in no doubt that this is so." 208 Fed. 2d 396 on page 397.**

ARGUMENT

Art 7998 (R. C. S. of Texas) (see supra, pg. 20).

This article brings the levee district tax procedures under the general tax laws. It takes approximately one hundred statutes to outline the tax procedures from rendering January 1st each year through payment by January 31st the following year. To say that these statutes and the constitutional provisions on real property taxes are irrelevant is to say that for levee district taxes we are going to let property owners guess at the amount of tax they owe. If these statutes, Art. 7151-7255, which Art. 7998 invokes for levee district taxes do not apply, then there are no laws which provide for the rendering, equalization, assessing, preparing rolls, paying, collecting current taxes, and collecting delinquent taxes, et cetera, of levee district taxes.

III.

POINT OF ERROR NUMBER THREE

The Honorable Circuit Court of Appeals erred in holding:

> **"Its claim is that Section 59(c)[2], providing for the creation of indebtedness necessary to achieve the purpose of the amendment and 'all such indebtedness may be evidenced by bonds' of the district and 'such indebtedness shall be a lien upon the property assessed for the payment thereof,' and Art. 8012, Revised Civil Statutes of Texas, Vernon's Ann. Civ. St., providing for the levy of taxes for the payment of bonds issued by any levee improvement district, and that 'such levy may be made for or at the time of the issuance of said bonds for each year throughout the life of the bond issue which shall be the rate of levy for each of said years until modified,' established beyond question that the bonds were a lien on the land as claimed and found." 208 Fed. 2d 396 on page 397.**

ARGUMENT

The assumption here is that at the time the bonds were issued, the levy of taxes was made for each year for the life of the bonds. This is certainly correct. This is what was done; this is what the law provides. But the assumption is further that at the time of the issuance of bonds, the taxes were figured on every acre of land within the district for every year during the life of the bonds. *This is certainly not correct.* Levying a tax is fixing the *rate.* Levying is setting the amount of money "per $100.00 of valuation," that taxes shall be. But to get the amount of tax due, this rate which has been levied must be multiplied by the

valuation of the property and the result is the tax due. This process is the assessment. Taking the rate and multiplying it by the value to get the amount of tax is the *assessment.*

The landowner values his property each year when he renders it. The value is fixed each year by the Equalization Board. This value varies from year to year from farm to farm. If a farmer builds a $10,000.00 home and a $5,000.00 barn on his land in 1950, then when he renders his taxes for 1951, these added improvements are included. The value of his farm has been increased materially. All his taxes, including levee district tax, are increased by this increased value. Every landowner is at liberty every year to lower his valuation and present evidence to the Equalization Board. If he is successful, his taxes are reduced.

The Court has erroneously assumed that the total proportionate part of the debt can be figured against each acre of land in the district, without going through the taxing procedures. This is not possible. There is an essential factor which varies from year to year. Until this factor is made definite, then as to what part of the debt any acre owes is pure conjecture.

IV.

POINT OF ERROR NUMBER FOUR

The Honorable Circuit Court of Appeals erred in holding that the bond holders had any claim against the lands except annual taxes.

ARGUMENT

Art. 16, Sec. 59(c) of the Constitution (quoted above) says:

> "The Legislature shall * * * also, authorize the levy and collection within such district of all such taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of such bonds; * * *."

Assume that the land had not been condemned and the district had defaulted in the payment of the bonds. What would have been R. F. C.'s remedy? Mandamus to the officials of the levee district to enforce the collection of taxes. Not to foreclose and take the farms, except for past due taxes. But to collect delinquent taxes and to compel the collection of taxes each year. Where is the law that changes R. F. C.'s remedy? If this decision is allowed to remain the law of the land, it will be the first time any court of record has ever said that holders of bonds which were voted to be paid out of annual taxes, had a lien for any but taxes which had been assessed and were past due. I make this statement after diligent periodic search in an extensive modern library over a period of about two years.

WHAT OTHER FEDERAL COURTS HAVE SAID ON THE SAME QUESTIONS.

The Circuit Court of Appeals for Puerto Rico in the case of *People of Puerto Rico v. U. S. (131 F. 2d 151)*, said that the money deposited in Court by United States Government when it takes title under condemnation proceedings stands in

the place of land taken and from it the claims of lienholders may be satisfied, but only claims, whether for taxes or otherwise, *based on existing liens, and not on potential liens.* Certiorari was denied *87 L. Ed. 1144.*

The District Court in California in the case of *U. S. v. 412.715 Acres of land in Contra Costa County (60 F. Sup. 576)*, said that upon payment into court of a fund to cover market value of condemned land, United States acquires title free of incumbrance and all *existing liens* attach to the fund.

The District Court of Missouri held the same thing in *U. S. v. Certain Land in City of St. Louis (29 F. Sup. 92).*

The District Court of N. Y. so held in *U. S. v. Certain Lands Located in Town of Hempstead, Nassau County (31 F. Sup. 513).*

The District Court of Penn. in the case of *U. S. v. Certain Parcels of Land in Mifflin Township, Allegheny County, Pa. (47 F. Sup. 333)*, said that the county taxes which had lost their liens *should not be paid* out of the fund in court, but taxes which were liens at time of condemnation *should be* paid.

The District Court of R. I. in the case of *U. S. v. 83.94 Acres of land, Newport County, R. I. (65 F. Sup. 843)* held likewise. They were affirmed in *Smythe v. U. S. (169 F. 2d 49).*

The Circuit Court of Appeals in Penn. in *U. S. v. Certain Parcels of land in Philadelphia, Pa. (130 F. 2d 782),*

said whether taxes for the year during which property is condemned may be apportioned, depends upon whether the tax was a lien on the property at the *time title vested* in the government.

The Circuit Court of Appeals of Puerto Rico in the case of *People of Puerto Rico on Behalf of Isabella Irr. Service v. U. S. (134 F. 2d 267), certiorari denied, 88 L. Ed. 448,* said that potential liens for future assessments which treasurer of Puerto Rico was authorized to levy upon lands in irrigation district taken by United States in condemnation proceedings could not be satisfied out of money paid into court as compensation for the taking of such lands.

The Circuit Court of Appeals for South Carolina in the case *Coggeshall v. U. S., 95 F. 2d 986,* says that taxes due county *up to time at which title to land condemned by United States vested therein* were liens on amount of jury's award thereof in court's hands.

The District Court in Louisiana in the case of *U. S. v. 12,918.28 Acres of Land in Webster Parrish, La., 51 F. Sup. 755,* said that land condemned for public use is removed from the status of private ownership, against which tax lien can accrue, only when legal title passes to public agency, not when it takes possession of land.

The District Court of N. Y. in the case of *U. S. v. Certain Lands Located in Town of Hempstead, Nassau County, 31 F. Sup. 513,* said where title to property vested in U. S. on November 30, 1939, county taxes which became a lien on January 1 and July 1, 1940, were not deductible from the

condemnation awards. To the same effect in case of *U. S. v. Certain Lands in Borough of Brooklyn, Kings County, State of N. Y., 41 F. Sup. 51.* To the same effect is *U. S. v. 232.68 Acres of Land in Shelby County, Tenn., 57 F. Sup. 891.* To the same effect is *U. S. v. Alberta, 55 F. Sup. 217,* and *U. S. v. Certain Lands in the City of Eau Claire, Eau Claire County, Wis., 49 Sup. 225.*

CONCLUSION

A careful consideration of the matter reveals that the opinion of the Circuit Court of Appeals should be reviewed by this court on a Writ of Certiorari, for at least four substantial reasons.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 611

COLLIN COUNTY LEVEE IMPROVEMENT DISTRICT NO. 1, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AND THE RECONSTRUCTION FINANCE CORPORATION IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 22–24) is reported at 208 F. 2d 396.

JURISDICTION

The judgment of the Court of Appeals was entered on December 9, 1953 (R. 25). A petition for rehearing was denied on January 12, 1954 (R. 29) and the petition for a writ of certiorari was filed on March 2, 1954. The jurisdiction of

this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether, under the law of Texas, a lien to secure the payment of bonds issued by a levee improvement district existed upon lands within the district at the time they were condemned by the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of Texas, Article 16, Section 59a (c) (Vernon's Annotated Revised Civil Statutes of the State of Texas (1925)):

> The Legislature shall authorize all such indebtedness as may be necessary to provide all improvements and the maintenance thereof requisite to the achievement of the purposes of this amendment, and all such indebtedness may be evidenced by bonds of such conservation and reclamation districts, to be issued under such regulations as amy [may] be prescribed by law and shall also, authorize the levy and collection within such districts of all such taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of such bonds; and also for the maintenance of such districts and improvements, and such indebtedness shall be a lien upon the property assessed for the payment thereof; provided the Legislature shall not authorize the issuance of any bonds or provide for

any indebtedness against any reclamation district unless such proposition shall first be submitted to the qualified property tax-paying voters of such district and the proposition adopted.

128 Texas Civil Statutes, Article 8012 (Vernon's Annotated Revised Civil Statutes of the State of Texas (1925)):

> When bonds have been issued by any levee improvement district, providing for the levy of taxes upon a benefit basis, the commissioners' court of the county, if the district is wholly within one county, or if the district is located in more than one county, then the commissioners' court of each county in which any portion of such district is located, shall levy and cause to be assessed and collected taxes upon all taxable property within such district, based upon and proportioned, as to each piece of property, to the net benefits which it shall have been found will accrue to such property from the completion of the plan of reclamation or other duly authorized work, which taxes shall be sufficient in amount to pay the interest on such bonds, as it shall fall due, and to raise an additional sum which will create a sinking fund sufficient to discharge and redeem such bonds at maturity; such levy may be made for or at the time of issuance of said bonds for each year throughout the life of the bond issue which shall be the rate of levy for each of such years until modified. * * *

STATEMENT

This proceeding was instituted by the United States in July, 1950, to condemn lands for a dam and reservoir project (R. 8). At the same time, a declaration of taking was filed pursuant to the Declaration of Taking Act of February 26, 1931, 46 Stat. 1421, 40 U. S. C. 258a, and estimated compensation for the various tracts involved was deposited in court (R. 8). Much of the land was located within Collin County Levee Improvement District No. 1. That district had been organized in 1916 to build a levee to reclaim overflow bottom land. This work had been financed by issuance of a total of $199,200 of bonds. At the time of taking, all of the remaining bonds were owned by the Reconstruction Finance Corporation, totalling in principal amount some $39,000 (R. 2, 7).

In the condemnation proceedings, the Reconstruction Finance Corporation moved for distribution of enough of the amount deposited to satisfy the bonds. The landowners contested this motion except to the extent that annual payments were delinquent (R. 8–9). The trial court found the facts as above outlined, including the finding that the district does not have cash in its treasury for payment of the bonds (R. 9). It concluded that the Reconstruction Finance Corporation had a lien on the lands which attached to the amounts deposited. Accordingly, it ordered the necessary distribution from the amounts deposited for the

various tracts (R. 12–13). The Court of Appeals for the Fifth Circuit affirmed, holding that under the applicable constitutional and statutory provisions the bonds were a lien on the lands at the date of taking.

ARGUMENT

The narrow question involved in this case is whether liens attaching to lands in levee improvement districts under the constitution and laws of Texas cover the entire amount of the bonded indebtedness at the time the bonds are issued, or whether liens attach in the amount of the annual levies as they are assessed. The question is an insubstantial one which gives no difficulty if the indebtedness here involved—that is, the bonded indebtedness of the improvement district to the bondholders—is distinguished from the obligations of the landowners to the improvement district. With respect to the bondholders' claims under the Texas law, the entire indebtedness came into existence at the time the bonds were issued and the land within the district immediately became security for the fulfillment of the district's obligation. This is made clear beyond doubt in *Hidalgo & Cameron Counties, etc.* v. *American Rio Grande Land and Irrigation Co.*, 103 F. 2d 509 (C. A. 5).

The petitioners' assertion of a conflict with *People of Puerto Rico* v. *United States*, 134 F. 2d 267 (C. A. 1), certiorari denied, 320 U. S. 753, is apparently based on a failure to recognize that it arose as to a different claim under a different law.

In that case the court was dealing with the extent of liens held by an irrigation district as security for assessments against lands within the district. The court held that such liens were merely potential until assessment and levy took place, this holding being specifically based upon the provisions of the Puerto Rican law. Nor is there any conflict with *People of Puerto Rico* v. *United States,* 131 F. 2d 151 (C. A. 1), certiorari denied, 318 U. S. 775, where the question again was the time of attachment of liens for Puerto Rican real estate taxes on lands taken by the United States. No question relating to a lien securing outstanding bonds was involved.

The court below was not concerned with any question of general importance. Instead it was called on to construe the constitution and laws of Texas relating to Texas levee improvement bonds. The court's interpretation of the Texas law was completely in accord with the views heretofore expressed by the Texas courts. *Brown County Water Improvement District No. 1* v. *Austin Mill & Grain Co.,* 138 S. W. 2d 523; *Dallas Joint Stock Land Bank* v. *Ellis County Levee Improvement District No. 3,* 55 S. W. 2d 227.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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In the

Supreme Court of the United States

OCTOBER TERM, A. D. 1953

No. 611

COLLIN COUNTY LEVEE IMPROVEMENT DISTRICT NO. ONE, *et al.*,

Appellants,

v.

UNITED STATES OF AMERICA, *et al.*,

Appellees.

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Reply to the "Brief for the United States and the Reconstruction Finance Corporation in Opposition Presented by Collin County Levee Improvement District No. One, et al., Appellants."

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OPINION BELOW

The Opinion of the Court of Appeals (R. 22-24) is reported at *208 F. 2d 396.*

QUESTION PRESENTED

Whether, under the law of Texas, a lien to secure the payment of bonds issued by a levee improvement district existed upon lands within the district, before the taxes are assessed and amount due by each individual farm has been determined.

In Reply to the Section of the United States Brief Entitled —Constitutional and Statutory Provisions Involved

The Constitution of Texas, Art. 16, Section 59a(c) Vernon's Annotated Revised Civil Statutes of Texas (1925):

> "The Legislature shall authorize all such indebtedness as may be necessary to provide all improvements and the maintenance thereof requisite to the achievement of the purposes of this amendment, and all such indebtedness may be evidenced by bonds of such conservation and reclamation districts, to be issued under such regulations as amy (may) be prescribed by law and shall also, *authorize the levy and collection within such districts of all such taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of such bonds;* and also for the maintenance of such districts and improvements, *and such indebtedness shall be a lien upon the property assessed for the payment thereof;* provided the Legislature shall not authorize the issuance of any bonds or provide for any indebtedness against any reclamation district unless such proposition shall first be submitted to the qualified property taxpaying voters of such district and the proposition adopted."

The italicized portion of the above constitution provision shows that the Constitution of Texas directs that

levee district bonds shall be paid by the levy and collection of taxes within the district. This is the only way that either the constitution or the statutes provide for paying levee district bonds. There is no other method for paying off bonds.

The words "and such indebtedness shall be a lien upon the property assessed for the payment thereof," is the constitutional provision which creates or authorizes a lien on the lands for the payment of the bonds. This is talking about a tax debt or a debt to be discharged by the levy and collection of taxes. This provision says that the "indebtedness shall be a lien upon the property *assessed.*" In other words, the lien comes into existence with the assessment of the property for taxes. Let's see when this assessment takes place.

Art. 8012 of the Revised Civil Statutes of Texas (1925) under title of "Levying taxes" outlines two separate methods of levying taxes. The first paragraph of the statute outlines the procedure "When bonds have been issued by any levee improvement district, providing for the levy of taxes upon a benefit basis, * * *." The taxes for the Collin County Levee Improvement District No. One are not levied on a "benefit" basis so we are not concerned with this. The second and last paragraph of the statute provides:

> "When bonds shall have been issued by any levee improvement district, providing for the levy of taxes upon ad valorem basis, the commissioners' court of the county, if the district is wholly within one county, or, if the district is located in more than one county, then the commissioners' court of each county in which

> any portion of such district is located, shall levy and cause to be assessed and collected taxes upon all taxable property within such district, based upon the value of each piece of property as made for State and county purposes, which taxes shall be sufficient in amount to pay the interest on such bonds as it shall fall due, and to raise an additional fund which shall create a sinking fund sufficient to redeem and discharge such bonds at maturity; such levy may be made for or at the time of issuance of said bonds for each year throughout the life of the bond issue which shall be the rate of levy for each of such years until modified. Sinking funds shall from time to time be invested in such county, municipal, district or other bonds as other sinking funds may by law be invested in, or in the bonds of the series to which such funds apply, if offered for redemption before maturity upon terms deemed advantageous to the district by its supervisors or the court of jurisdiction."

The Collin County Levee Improvement District No. One levies taxes on an "ad valorem" basis. The photostatic copies of the bond transcripts filed by Reconstruction Finance Corporation in the trial court so designate. It has been assumed in the trial court and in the Circuit Court of Appeals by the levee district that all parties agreed that the tax levy was on an "ad valorem" basis. The taxes were and have always been levied on an "ad valorem" basis.

This being so, let's see the procedure the statutes of Texas dictate.

In Art. 8012 above quoted we find that the Commissioners' Court shall "levy and cause to be assessed and collected taxes upon all taxable property within such district,

*based upon the value of each piece of property as made for state and county purposes * * *."*

This is a clear statutory directive to use the State and County value of each individual farm in the levee district to figure that farm's levee tax.

Art. 7998 of the Revised Civil Statutes provides:

> "In all levee improvement districts providing for the levy of taxes upon an ad valorem basis, the taxable property shall be assessed at the same value as assessed for State and County purposes. In the assessment of taxes in such districts, and in all matters pertaining thereto or connected therewith, the county tax assessor shall have the same powers and shall be governed by the same rules, regulations and proceedings as are provided by the laws of this State for the assessment and collection of county and State taxes. And the county commissioners' court shall constitute the board of equalization for such levee improvement district or districts, and all laws governing boards of equalization for county and State taxing purposes shall govern such board or boards for such levee improvement districts. It shall be the duty of the county tax assessor of the county to assess all property within such levee improvement district and list the same for taxation in the books or rolls furnished him by the commissioners' court for that purpose, and return said books and rolls at the same time when he returns the other books and rolls of the State and county taxes for correction and approval * * *."

This statute by saying "in the assessment of taxes in such district, and in all matters pertaining thereto or connected therewith, the county tax assessor shall have the same powers and shall be governed by the same rules, regu-

lations and proceedings as are provided by the laws of this State for the assessment and collecting of county and State taxes * * *" clearly and definitely places levee district tax procedures under the County and State tax procedure statutes.

We have agreed that the bonded indebtedness is going to become a lien on the individual farms in the district when the individual farms are "assessed." Therefore our question becomes simply this: According to the Texas Statutes regulating County and State tax procedures when is the property "assessed" for taxes? Let's look at the statutes and see:

Art. 7151 (R. C. S. of Texas) says the landowner should render his property for taxes between January 1 and April 30 of each year.

Art. 7189 (R. C. S. of Texas) says:

> "Assessors of taxes shall, between the first day of January and the thirtieth day of April of each year, proceed to take a list of taxable property, real and personal in his county and *assess the value* (italics mine) thereof in the manner following, to-wit: * * *."

Art. 7190 to 7205 (R. C. S. of Texas) outlines in detail the method to be followed in *assessing* (italics mine) the various types of property.

Art. 7198 (R. C. S. of Texas) provides that the *assessing* (italics mine) must be completed "on the first day of June each year, or as soon thereofter as practicable."

Art. 7206 (R. C. S. of Texas) provides for equalization of taxes.

Art. 7219 (R. C. S. of Texas) requires preparation of tax rolls.

Art. 7255 (R. C. S. of Texas) requires the tax collector to begin the collection of taxes annually "on the first day of October, or so soon thereafter as he may be able to obtain the proper *assessment* (italics mine) rolls * * *."

These statutes which regulate the levee district taxes show clearly what is meant when the Constitution says "* * * and such indebtedness shall be a lien upon the property *assessed* (italics mine) for the payment thereof." This property is assessed each year for that year's taxes; no one knows how much the tax will be on any farm until the land owners render, the tax assessor assesses, the board equalizes and the assessment rolls are made up for each year. The amount of taxes varies from year to year on the same farm. It follows State and County value (Art. 7998, supra).

There is no Texas case construing this part of the Constitution on levee district taxes. There are many Texas cases saying when State and County Taxes become liens on real estate.

The Supreme Court in *State v. Farmer, 94 Tex. 232, 59 S. W. 541*, holds:

> "The lien of the State, under the provisions of the Constitution, arises out of the assessment of the property and does not exist until that assessment is made. It is the assessment made annually by the officers of

the state under and in accordance with the law which holds a lien upon the land. The word 'assessment' as here used evidently means the sum which has been ascertained as the apportioned part of the tax to be charged against the particular piece of property, but under our Constitution and the provisions of our statute, the word embraces more than simply the amount and includes the procedure on the part of the officials by which the property is listed, valued and finally the pro rata declared."

The case of *Freeman v. State, et al. (199 S. W. 2d 301)*, holds:

"This view is further fortified by the fact that the foreclosure of the tax lien on realty, followed by a sale thereof, is a harsh remedy, and to justify divesting an owner of his title, a strict adherence to the requirements of the law must be had. Only by such strict adherence can it be a judicial proceeding as contra-distinguished from a summary proceeding. As we construe the law relating the collection of delinquent taxes, antecedent things necessary to fix a valid tax lien, and consequent authority to foreclose it, must result only from what the tax records show. Due process requires as much. See also: Chisholm v. Adams, 71 Tex. 678, 10 S. W. 336; Miller v. Vance, 107 Tex. 485, 180 S. W. 739; Crocker v. Santo Consolidated School Dist., Tex. Civ. App., 116 S. W. 2d 750, Syl. 12-14; Broocks v. State, Tex. Civ. App., 41 S. W. 2d 714; Garza v. City of San Antonio, Tex. Com. App., 231 S. W. 697; Gifford Motor Co. v. Phillips, Tex. Civ. App., 55 S. W. 2d 1087; 40 Tex. Jur., pages 227-228, Para. 161 and 162.

"The rule is that taxes are not a lien upon property unless expressly made so, and this applies to special taxes in districts, as well as general taxes. Cooley, Taxation, pp. 865, 866, and authorities cited in footnotes; State v. Hunt (Tex. Civ. App.), 207 S. W. 636."

Texas Jurisprudence under the general topic of "Taxation," vol. 40, pg. 203, Sec. 145 says:

"A lawful assessment[12] is a prerequisite of a lien."[13]

Certainly a lien cannot come into existence without some law creating it. The Texas statutes and Constitution say that the lien is created on the property "assessed" and that this occurs annually for that year's taxes.

The United States is contending that the taxes were "assessed" with the issuance of the bonds for the entire life of the bonds. They are confusing "rate of levy" which is the amount of tax per $100 of value with "assessment" which is the application of the "rate of levy" to the "value." The "rate of levy" is set for the entire life of the bonds.

Art. 8012 says "* * * such levy may be made for or at the time of issuance of said bonds for each year throughout the life of the bond issue which shall be the rate of levy for each of such years until modified * * *."

The rate (that is amount of tax due per $100 of value) is set at the time the bonds are issued for each year throughout the life of the bonds (unless modified). But this rate which is set cannot be translated into amount of tax due on any particular farm until the farm is "valued." This takes place each year (see Arts. 7151, 7189, 7190, 7198, 7206, 7219 and 7255 of Texas Statutes supra).

Until this procedure is gone through *each year* no one knows the amount of tax each farm will owe. It can vary, common sense dictates that it will vary from year to year.

The total amount of debt is one definite figure, but the amount of this debt that each individual farm will owe is not definite and cannot be made definite until that farm goes through the tax mill each year. Therefore, to say that on July 12, 1950, when the declaration of taking was filed, at that instant the entire bonded indebtedness which was voted to be paid out of annual taxes through 1969, all became due at one time, and had to be paid by the individual landowners, is in effect saying to the individual landowner, "you pay your taxes for the next nineteen years, and do this, in spite of the fact that there is no way to determine the legal and proper amount of this tax."

The Constitution nor statutes of Texas provide for any such procedure. The landowners, when they voted the bonds, did not contemplate any such procedure. The entire matter was set up on a foundation of the landowner paying an annual tax. Could anything be more unjust than requiring him to pay nineteen years' future taxes on farm lands that he no longer has the benefits of and then just guessing at the amount he is required to pay?

On page 3 of the brief of the United States is quoted the first paragraph of Art. 8012 (R. C. S. of Texas 1925). This is the part of the statute that applies where bonds are issued by a levee district providing for the levy of taxes on "a benefit basis." Since our levee district levies taxes on an "ad valorem basis" this part of the statute has absolutely no application here.

In Reply to the Section of the United States' Brief Entitled—Argument

In the "Argument" of the United States, we find this statement on page 5:

> "With respect to the bondholders' claims under the Texas law, the entire indebtedness came into existence at the time the bonds were issued and the land within the district immediately became security for the fulfillment of the district's obligation."

We agree absolutely with this statement. It is correct. The entire indebtedness did come into existence at the time the bonds were issued and the land did immediately become security for the fulfillment of the district's obligation. But it only became security when that particular land's proportionate part of the tax burden became a definite figure that was translated into dollars and cents. The only time this happened was each year for that year's taxes. This is the obligation the landowners voted upon themselves. There is no law that changes it.

We next find this statement:

> "This is made clear beyond doubt in Hidalgo & Cameron Counties, etc. v. American Rio Grande Land and Irrigation Co., 103 F. 2d 509 (C. A. 5)."

This *Hidalgo and Cameron Counties* case is not a levee district case; the complete name of the district as given on *page 509, Vol. 103 Fed. 2d* is:

> "Hidalgo & Cameron Counties Water Control & Improvement District No. 9."

This is an irrigation district, not a levee district, as the court's opinion states on page 512 (2, 3): "The lengthy statutes relating to reclamation districts are collected in Revised Statutes of Texas, Art. 7880-1 et seq."

The title of this section of the statutes is "Water Control and Improvement Districts." These statutes require from pages 258 to 384 of Vol. 21 of Vernon's Statutes. They have no connection whatever with levee districts. The levee district statutes are Arts. 7972 to and including 8030, it is under these statutes that Collin County Levee Improvement District No. One was organized and functions.

In the *Hidalgo and Cameron Counties* case they were litigating some charges and assessments that the district had made for irrigation water it had delivered. The court, on page 512 (2, 3) said:

> "These charges and assessments are not taxes within the meaning of the Texas tax statutes."

The opinion then says that these districts may get their income from general taxation, from charges for water actually furnished, or from assessments on each irrigable acre (whether irrigated or not). The court then said:

> "These taxes unquestionably have a lien. They are not here involved. What is here involved are 'operation charges' for the water furnished and service rendered * * *."

This case is interpreting different statutes, dealing with a different type of district and is not concerned with what

the district owes its landholders but rather what the district's customers owe the district. It could hardly be considered as authority for any point in our case.

I agree with the statement of the United States that the question in cases *People of Puerto Rico v. United States, 134 Fed. 2d 267, certiorari denied, 320 U. S. 753,* and *People of Puerto Rico v. United States, 131 F. 2d 151, certiorari denied, 318 U. S. 775* was "the time of attachment of liens for Puerto Rican real estate taxes on lands taken by the United States." And that is exactly our question. Had the lien attached to our levee district individual farms for the total amount of the bonds, or did it attach each year as the taxes were "assessed" and the amount that farm owed determined? It happens that the question is fundamental and that in the two Puerto Rican cases is the only time it has ever reached this court.

The United States in its brief on page 6 says:

> "The court's interpretation of the Texas law was completely in accord with the views heretofore expressed by the Texas courts. Brown County Water Improvement District No. 1 v. Austin Mill & Grain Co., 138 S. W. 2d 523; Dallas Joint Stock Land Bank v. Ellis County Levee Improvement District No. 3, 55 S. W. 2d 227."

I don't believe the *Brown* case has any application here. Its title shows it to be a water district case and not a levee district case. In the second place it was a suit to collect taxes. In fact, it was an attempt to collect taxes which the district property owners had never voted on their property.

The court merely said that these taxes were no lien on the property because they were not voted on by the property owners as the Constitution directs. The case can be authority for no question currently before this court.

The Ellis County Levee Improvement District No. Three case is another case filed to collect delinquent taxes. The only point in it that could have any bearing on the instant case is that if real property values decline, then the tax rate must increase, so as to collect sufficient money to pay the interest on the bonds and provide a sinking fund. This case shows clearly that the "rate" and "value" can and do fluctuate as conditions change, and that in place of these factors being static they vary from year to year.

CONCLUSION

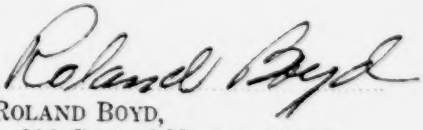
The individual landowners voted upon themselves an obligation to pay an annual tax each year through 1969. The Texas Constitution guaranteed to them that they would have to pay only the obligation they voted upon themselves. There is no law to change this obligation. They thought they were guaranteed that they would have to pay only a small amount each year and that while making these payments they could enjoy the annual harvest from their farms. Now, all of a sudden, their farms are taken from them and they are ordered to pay nineteen years' taxes at one time and the amount each is to pay can be determined only by guess work. The bonds are a district debt—they should be paid out of district assets. (The district owns a

levee system that the record in this case shows cost $199,-000.00 to build.)

If we start inventing law, where none exists, where are we going to stop? What kind of an invention are we going to indulge in to determine what part of the tax burden belongs to each farm? The statutes say we multiply the rate (amount of tax per $100 of valuation) by the "value" to determine that farm's part of the levee tax, and that the "value" is set annually. By what authority are we going to change this? The only times the question has ever reached this court were in the two *Puerto Rican* cases wherein the court held the indebtedness was a "potential" lien only until the "assessment" was made annually. How could it be otherwise? How can you have a lien on property until you have a definite and certain amount? The total amount is definite and certain, but the part of that total that each individual farm owes is not definite and certain until the annual assessment is made.

WHEREFORE the petition for a writ of certiorari should be granted.

Respectfully submitted,



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